

ESTTA Tracking number: **ESTTA43224**

Filing date: **08/26/2005**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92043900
Party	Defendant DIE GEM CO., INC., THE DIE GEM CO., INC., THE P.O. BOX 8033 MAPLE VALLEY STATION AKRON, OH 44320
Correspondence Address	THE DIE GEM CO., INC. P.O. BOX 8033, MAPLE VALLEY STATION AKRON, OH 44320
Submission	Answer
Filer's Name	James R Adams
Filer's e-mail	JRA@die-gem.com
Signature	/James R Adams/
Date	08/26/2005
Attachments	05.pdf (4 pages)

United States Patent and Trademark Office
Trademark Trial and Appeal Board
P O Box 1451
Alexandria, Va. 23313-1451

Petitioner Omnova Solutions Inc
175 Ghent Road
Fairlawn Oh 44333-3300

92043900

V.

Respondent The Die-Gem Co., Inc.
One The Die-Gem Way
Akron, Ohio 44312-1539

Aug. 24, 2005

Answer to Petitioners Motion for Default

1. The Die-Gem Co., Inc. has made a timely Answer as required by the TT&AB.
2. All motions, answers and correspondence with the TT&AB have been served on representative of the Petitioner Omnova Solutions Inc. and certified to the Board.
3. The Die-Gem Co., Inc. has not been floating the Board's rules but has diligently gathered information needed for the Board requested Answer as well as the inquiry of the representative of Omnova Solutions. The time between events is minimal and this is prima facie when considering the time line.
 - A. The Die-Gem Co., Inc responded in writing within 24 hours of receiving an envelope containing Opposition #91163116 dated February 18, 2005. The Die-Gem Co., Inc response contained contact information including return address, phone #, fax# and E mail address. No response to The Die-Gem Co., Inc. letter dated February 22, 2005 and mailed February 23, 2005.
 - B. On March 22, 2005 an application for 10 year renewal of the mark PEEL N STICK was filed on line with Patent and Trademark office as further evidence of The Die-Gem Co., Inc continued use and planned future use of the mark PEEL N STICK.
 - C. On March 23, 2005 The Die-Gem Co., Inc obtained further evidence of the dilution of the mark PEEL N STICK at the Omnova Solutions Inc stockholders meeting where it was learned that Omnova Solutions Inc through its subsidiary company GenFlex ® roofing systems has a comprehensive plan for the expanded use of the mark Peel & Stick™ further diluting the value of the trademark PEEL N STICK®.

- D. The notification of the error was ignored and the” Board’s Decision: Granted” March 25, 2005.
- E. On April 4, 2005 The Die-Gem Co., Inc. filed on line a motion to Quash the Boards Decision granted on March 25, 2005 and requested a 30 day extension to answer the Cancellation. This filing became public information when filed and was available immediately to Omnova Solutions Inc.
- F. Further, The Die-Gem Co., Inc continued efforts to resolve this matter as shown by the following facts. The Die-Gem Co., Inc. called the listed response numbers four times without response. Messages were left with the assurance that someone would get back to The Die-Gem Co., Inc.
- a. Called twice April 1, 2005, No Response
 - b. Called April 7, 2005, No response
 - c. Called again April 7, 2005 was transferred left message. No Response
- G. On April 8, 2005 The Die-Gem Co., Inc. called and talked to the Interlocutory Attorney and explained that there was a letter there (in their office) from The Die-Gem Co., Inc. with copies of the Opposition #91163116 proceeding that had been addressed to The Die-Gem Co., Inc. The envelope mailed to The Die-Gem Co., Inc. did not contain the notification of the proceeding 92043900.
- H. April 20, 2005 Commissioners Order Canceling Registration mark PEEL N STICK.
- I. April 22, 2005 Judgment was Vacated and an additional forty days (from the mailing date) was granted to complete the answer to the petition to cancel. The mailing date was May 26, 2005 and due date was June 6, 2005.
- J. May 5, 2005 Post Registration Action can not accept combined section 8 Affidavit & Section 9 Renewal Application submitted 3/22/05.
- K. May 12, 2005 The Die-Gem Co., Inc notified Post Registration that the proceeding 92043900 trial Interlocutory Attorney has reversed the decision by Default.
- L. May 30, 2005 The Die-Gem Co., Inc filed the Answer to cancellation proceeding 92043900.
- M. June 3, 2005 The Die-Gem Co., Inc contacts Post Registration about renewal of mark PEEL N STICK. Post Registration can do nothing until TT&AB corrects error and officially reinstates mark.
- N. June 8, 2005 Commissioner Order Reinstating Registration

O. June 9, 2005 Section 8 (10-year) accepted/Section 9 granted

P. June 9, 2005 First 10 year Renewal granted for the mark PEEL N STICK

Q. July 27, 2005 Petitioner Omnova Solutions Inc renews motion for Default Judgment

The petitioner Omnova Solutions motion for default should be denied. The time line presented in A through Q verifies the facts that The Die-Gem Co., Inc moved with all possible hast to resolve the problems and answer the requests. All certification have been completed.

James R Adams
President
The Die-Gem Co.

Email response JRA@die-gem.com

330-784-7400 Fax 7542

I certify that on the 26th of August 2005 the Answer to the Motion for Default was served by internet addressed to the representative of Omnova Solutions Inc. :

Mr. Ajay A. Jagtiani
Jagtiani + Gutttag
10363-A Democracy Lane
Fairfax, Va. 22030

At

iplaw@jagtiani.com
web site [www. Jagtiani.com](http://www.Jagtiani.com)

And by

I certify that on the 26th of August 2005 the Answer to the Motion for Default was served by US Mail addressed to the representative of Omnova Solutions Inc. addressed and postage prepaid to the correspondent of record for Petitioner:

Mr. Ajay A. Jagtiani
Jagtiani + Gutttag

10363-A Democracy Lane
Fairfax, Va. 22030

James R Adams
President

JRA@die-gem.com
330 784-7400